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Court, U.S.
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IN THE

Supreme Court of the United States

CALVERT TURLEY, DELORES TURLEY, JOSEPH WHANN, NANCY WHANN, GREGORY GATES, DEBORAH GATES, and ROBERT THWEATT,

Petitioners,

v.

DANIEL EDDY, JR., RUSSELL WELSH, SONIA STONE, HERMAN "TJ" LAFFOON, SONIA CHAVEZ, DOREEN WELSH, VALERIE WELSH-TAHBO, DENNIS PATCH, and CRAIG CHUTE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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November 24, 2003

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QUESTIONS PRESENTED

Whether, when considering Indian tribal officials' sovereign immunity defense, courts must first determine the scope of tribal sovereignty.

Whether, when Indian tribal officials assert sovereign immunity as a defense to litigation challenging the lawfulness of their actions asserting reservation jurisdiction over lands which are (1) outside of the legislated boundaries of the tribe's reservation and (2) precluded by statute from having reservation status, courts must first determine the scope of tribal sovereignty.

Whether courts can apply the "Indian lands exception" to the Quiet Title Act, 28 U.S.C. § 2409a without first determining that the litigation involves "trust or restricted Indian lands."

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OPINIONS BELOW

The unreported Memorandum Opinion of the court of appeals is set forth in the Appendix at 1a-3a. The unreported Order denying the petition for rehearing and the petition for rehearing en banc is set forth in the Appendix at 16a-17a. The district court's unreported Order Granting Defendants' Motion to Dismiss Plaintiffs' Complaint is set forth in the Appendix at 4a-15a.

STATEMENT OF JURISDICTION

The court of appeals entered its judgment on July 16, 2003. Rehearing was denied on August 25, 2003. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. Art. IV, § 3, cl. 2 [Property Clause]

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States....

U.S. Const. Art. I, § 8, cl.3 [Commerce Clause]

> The Congress shall have Power to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.

U.S. Const. Amend. V [Takings Clause]

> ...nor shall private property be taken for public use, without just compensation.

Quiet Title Act, 28 U.S.C. § 2409a (App. at 18a)

> (a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands....

California Indian Reservation Act of April 8, 1864, 13 Stat. 39 (App. at 19a-22a)

> ... there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes of Indian reservations....

Colorado River Reservation Act of March 3, 1865, 13 Stat. 541, 559 (App. at 23a-24a)

> *Indian Service in the Territory of Arizona*.... All of that part of the public domain in the Territory of Arizona, lying west of a direct line from Half-Way Bend to Corner Rock on the Colorado River, containing about seventy-five thousand acres of land, shall be set apart for an Indian reservation for the Indians of said river and its tributaries.

Act of April 30, 1964, 78 Stat. 188 (Sections 2(b) and 5) (App. at 25a-27a)

I. STATEMENT OF THE CASE

A. Introduction.

At the outset it is important to recognize that petitioners do not question the established principle of Indian tribal sovereign immunity. Indeed, petitioners readily acknowledge that when tribal immunity applies, it is virtually absolute.

This case raises the related, but clearly distinct, issue of the courts' obligation to inquire as to the scope of tribal immunity when the applicability of the doctrine itself is at issue.

Petitioners challenge actions of officials and representatives of the Colorado River Indian Tribes ("Tribe"), a federally recognized Indian tribe occupying the Colorado River Reservation in Arizona. The ultimate issue is whether respondents are lawfully asserting reservation jurisdiction over lands on the western bank of the Colorado River within California (the "West Bank Lands") and outside the boundaries of the Tribe's reservation.

The courts below dismissed the case on sovereign immunity grounds without inquiry as to the scope of tribal sovereignty. In other words, they concluded that the doctrine of tribal immunity bars petitioners' suit because respondents are tribal officials representing the Tribe. In making that determination, the courts did not first examine the nature of the challenged actions to ascertain whether they are protected, ignoring the fundamental principle that actions beyond the scope of tribal sovereignty are not.

Each of the petitioners owns or occupies a residence on the West Bank Lands. In 2000 and 2001, respondents began aggressively asserting reservation status and tribal ownership of, and jurisdiction over, the West Bank Lands. These actions culminated in the issuance of tribal notices that petitioners should vacate their residences and tribal confiscation of personal property of some of the petitioners. The petitioners sought judicial review in

the district court to determine whether the respondents are acting beyond the legislated scope of the Tribe's sovereignty and to enjoin activities beyond that scope.

The legal foundation for this challenge is in two federal statutes: the California Indian Reservation Act of April 8, 1864, 13 Stat. 39 ("1864 Act"), and the Colorado River Reservation Act of March 3, 1865, 13 Stat. 541, 559 ("1865 Act"). The first limited the number of Indian reservations which could be established within California to no more than four. The second established the Tribe's reservation within what today is the State of Arizona without legislating an exception to the 1864 Act so as to legalize the Tribe's claim to reservation land in California.

The West Bank Lands are not held by the Secretary of the Interior in trust for the Tribe. Rather, they are public domain.

The implications of this case are enormous and far-reaching, since the Tribe is asserting – and the Bureau of Indian Affairs is not contesting – that it can stake a claim to public domain land and unilaterally incorporate that land into an expanded reservation despite statutory prohibitions to such an acquisition. If the respondents can ignore statutes specifically prohibiting their actions here, then officials of other tribes are free to undertake similar actions without pursuing the statutory and regulatory requirements for acquiring lands in trust and then having them taken into reservation status. Congress has imposed limits on tribal land acquisition and reservation proclamation, and the courts must be willing to enforce them. The courts below have not done so.

In defense to petitioners' action against the tribal officials and representatives who are implementing the Tribe's reservation expansion, the respondents have asserted below that the courts must dismiss litigation against tribal officials without even considering the scope of tribal sovereignty – arguing that the Tribe is an indispensable party under Fed. R. Civ. P. 19, necessitating

dismissal since tribal sovereign immunity protects it from suit. The respondents have further asserted that the courts cannot consider the scope of tribal sovereignty in assessing the nature of land in dispute since the United States also is an indispensable party which cannot be sued because of the "Indian lands" exception to the Quiet Title Act, 28 U.S.C. § 2409a, even though the West Bank Lands are neither in trust status nor reservation lands as a matter of law.

Thus, the defense of tribal immunity has been invoked to bar judicial review of whether that defense even applies to the dispute as a matter of federal statute. Congress has plenary power over such matters and has enacted two laws dealing with this specific situation. By summarily dismissing petitioners' claims, the courts below have ignored those laws as well as decisions of this Court. Unless this Court considers and decides the matter, petitioners are left with no redress and officials of other tribes have a theoretical license to unilaterally expand their reservations without accountability.

B. Procedural History.

The district court granted the respondents' motion to dismiss, citing the indispensability of the Tribe and its immunity from suit because of tribal sovereignty (App. 11a-15a) and the indispensability of the United States and its immunity from suit under the Indian lands exception to the Quiet Title Act (App14a-15a).

The court did not assess the scope of tribal sovereignty in applying the doctrine of tribal sovereign immunity. Without even examining whether the West Bank Lands are in trust, the district court erroneously concluded, "The same analysis requires the Court to hold that the United States, which holds the West Bank Lands in trust for the Tribe, is also a necessary and indispensable party." (App. 14a.) Nor did the court assess whether the West Bank Lands are Indian lands under the Quiet Title Act. Rather, it assumed that the lands were in trust despite statements of this Court

and materials in the record to the contrary, and ruled that the United States is both indispensable and immune from suit (App. 14a-15a).

The Ninth Circuit summarily affirmed the district court without oral argument, repeating the findings of the Tribe's and United States' indispensability and without initially determining the scope of tribal sovereignty or the status of the West Bank Lands as "Indian lands." In fact, the court simply stated, "Indian trust lands are at stake" (App. 2a.) and applied the exception to the Quiet Title Act. Further, relying on two decisions of this Court in the Colorado River water rights adjudication in which the specific limitations of tribal sovereignty in the 1864 and 1865 Acts apparently were never raised and the reservation issue not decided,[1] the court found the Tribe to be indispensable. (App. 2a-3a.)

The Ninth Circuit subsequently denied the petition for rehearing and suggestion for rehearing en banc (App. 16a-17a).

II. REASONS FOR GRANTING THE WRIT

Scope of Tribal Sovereignty.

These issues are critical to the overall assessment and legitimate application of tribal immunity and claims to land status when non-Indian property rights are at stake. It is clear that tribal sovereign immunity precludes suits against tribes and that the United States cannot be sued when Indian lands are at issue. However, it also is clear that tribal officials cannot go beyond the scope of tribal sovereignty in acting on behalf of their tribes, and the courts must first determine that sovereignty extends to their actions before ruling that litigation can or cannot proceed. This was not done here, and the petitioners are being forced out of their homes and seeing their property confiscated as a result.

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[1] *Arizona v. California*, 460 U.S. 605, 629-31 (1983); *Arizona v. California*, 530 U.S. 392, 418-19 (2000).

At stake is nothing less than the integrity of Congress' power to regulate commerce with "Indian tribes." Faced in 1886 with a congressional enactment which prescribed a system of criminal laws for Indians living on their reservations, this Court rejected the government's argument that the law was grounded on the Commerce Clause. However, it sustained the act on the following grounds: "From their very weakness and helplessness, so largely due from the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this Court, whenever the question has arisen." *United States v. Kagama*, 118 U.S. 375, 384 (1886).

It would appear that the *Kagama* reasoning would render the Commerce Clause irrelevant as a source of power over Indian tribes, but this Court, in sustaining acts of Congress, appears to treat the Commerce Clause and "the recognized relations of tribal Indians" as joint sources of Congress' power. *See Perrin v. United States*, 232 U.S. 478 (1914); *Johnson v. Gearlds*, 234 U.S. 422 (1914); *Dick v. United States*, 208 U.S. 340 (1908).

Congress has carefully legislated limits to the Tribe's reservation jurisdiction as the following illustrates.

By the1864 Act, Congress limited the number of Indian reservations which could be established within California to four. (App. 19a.). The four reservations established pursuant to that law are Round Valley, Mission, Hoopa Valley and Tule River. *Mattz v. Arnett,* 412 U.S. 481, 493-94 (1973).

By the 1865 Act, Congress created the Colorado River Reservation within the Territory of Arizona extending west to the Colorado River. (App. 23a.) It did not authorize the extension of the reservation into California.

There is no subsequent statute authorizing a reservation for the Tribe within California.[2]

Congress defined the Colorado River Reservation for certain purposes in the Act of April 30, 1964, 78 Stat. 188 (the "1964 Act"), as follows: "'Colorado River Reservation' means the reservation for Indian use established by the Act of March 3, 1865 (13 Stat 559)... ." (App. 26a.)

The 1964 Act confirmed that the Reservation boundaries had never been legislated to include land within California, stating "any of the described lands in California shall be subject to the provisions of this Act when and if determined to be within the reservation." (App. 27a.)

This Court has recognized the limits placed on the extension of the reservation into California.

In 1963, this Court reviewed the report of a Special Master who examined the reservation boundary and determined that the western line of the Reservation was a riparian boundary at the Colorado River and not extending into California, as was discussed in *Arizona v. California,* 460 U.S. at 630-36. That review apparently led to the Secretary of Interior's issuance in 1969 of an administrative memorandum stating that the West Bank Lands were in trust by virtue of accretion and no longer part of the public domain. In 1983, this Court rejected that attempt by the Secretary to finesse the reservation in favor of the Tribe: "[W]e in no way intended that *ex-parte* secretarial determinations of the boundary

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[2] Since 1864, Congress has authorized California reservations for other tribes as the need and appropriateness dictated. *See, e.g.,* Mission Indians Relief Act of January 12, 1891, 26 Stat. 712, which authorized the establishment of reservations for Mission Indians residing in Southern California, which reservations were to be set aside from lands then in the public domain.

issues would constitute 'final determinations'...." *Arizona v. California,* 460 U.S. at 636.

Despite the clear power of Congress to determine these issues, the respondents continue to ignore the law and avoid any judicial review by claiming tribal rights which do not exist as a matter of statute.

Citing *Dawavendewa v. Salt River Project Agricultural Improvement and Power Dist.*, 276 F.3d 1150 (9th Cir. 2002), the district court held that the Tribe's sovereign immunity precluded it being joined as a party. However, sovereign immunity has no application where, as here, the actions challenged are beyond the scope of the Tribe's sovereignty. And sovereignty does not extend beyond the bounds of the Tribe's reservation. Taken to the extreme, the district court's ruling would seem to permit tribal officials to claim virtually any land, yet avoid litigation testing its claim by hiding behind the veil of tribal immunity.[3] Surely, there is no basis to sanction such an absurd result especially when respondents' actions ignore statutory limitations on the Tribe's reservation boundary and, correspondingly, its jurisdiction.

Indian tribes ordinarily possess the common law immunity from suit traditionally enjoyed by sovereign powers, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978), but that doctrine is not called into play when tribal officials are acting outside the scope of tribal sovereignty: "[T]ribal immunity is not a bar to actions which allege conduct that is determined to be outside the scope of a tribe's sovereign powers." *Snow v. Quinault Indian Nation*, 709 F.2d 1319, 1321 (9th Cir. 1983), *cert. denied*, 467 U.S.

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[3] The extent to which the district court refused to even consider the scope of tribal sovereignty is shown by its cavalier rejection of whether the respondents had reservation jurisdiction over the West Bank Lands as "a fundamentally flawed premise" (App. 6a). The court simply refused to even consider that reservation jurisdiction does not extend into California.

1214 (1984) (citing *Swift Transportation Inc. v. John*, 546 F. Supp. 1185, 1188 (D. Ariz. 1982)).

Furthermore, although respondents were sued in their capacity as members of the Tribe's Tribal Council, "tribal officials are not necessarily immune from suit." *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1270 (9th Cir. 1991) (citing *Santa Clara Pueblo*, 436 U.S. at 59). "When such officials act beyond their authority, they lose their entitlement to the immunity of the sovereign." *Id.*

That the courts must first examine the scope of tribal sovereignty is adjudicated: "[E]ven if the tribe and its instrumentalities are immune, the individual officers of the tribe will not be immune unless they were 'acting in their representative capacity and within the scope of their authority.'" *Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1387 (9th Cir. 1988) (quoting *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985)). In other words, tribal officers are subject to suit under the doctrine of *Ex parte Young*[4] when they act beyond their authority. *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida*, 177 F.3d 1212, 1225 (11th Cir. 1999), *cert. denied*, 529 U.S. 1018 (2000).

The extent to which the district court refused to even consider the scope of tribal sovereignty is shown by its abject dismissal that it should examine whether the respondents have reservation jurisdiction over the West Bank Lands as "a fundamentally flawed premise." (App. 6a.) Yet the court's Rule 19 dismissal included the conclusion that the Tribe has a "legally protected interest in whether the West Bank Lands are reservation

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[4] 209 U.S. 123, 151 (1908) (citing *Ex parte Ayers*, 123 U.S. 443, 504 (1887)).

lands." (App. 7a-8a.)[5] However, if the reservation legally cannot extend into California, then the Tribe cannot have a legally protected interest and its sovereignty cannot extend to the West Bank Lands; in short, if the Tribe does not have a legally protected interest in the lands, then respondents' exercise of reservation jurisdiction was beyond the scope of sovereign immunity. The court did not conduct any assessment of the scope of tribal sovereignty, and in the absence of such an assessment it could not competently conclude that the Tribe has a legally protected interest in the West Bank Lands.

The point is important because Rule 19 does not concern an "interest" which is not legally protected. The fact that the Tribe has been asserting jurisdiction for a period of years does not establish a legal right otherwise barred by statute. And the appropriate test by which to judge the legality of respondents' activities is whether the reservation can extend to the West Bank Lands as a matter of law. If the Tribe's claims are illegal, then they are not protected, but the district court did not conduct the appropriate review. It should be required to do so before invoking tribal sovereign immunity to block the litigation.

Restated, the Tribe cannot be prejudiced if its claim to the West Bank Lands is illegal. And, the courts should first determine whether federal law bars the Tribe's claims, for it they are barred then there can be no tribal interest and no tribal sovereignty.

Indispensability of the United States.

In finding that the United States is a necessary and

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[5] The district court reinforced its supposition that the reservation extends to the West Bank Lands with a concluding statement that the Tribe is the "beneficial" owner of the land (App. 15a). The term "beneficial" is applied to a tribe for which land is in trust, land status assumed by the court but not supported by the record before it.

indispensable party, the district court assumed that the United States "holds the West Bank Lands in trust for the Tribe." To support its ruling, the district court relied on *Imperial Granite Co. v. Pala Band of Mission Indians, supra*, for the proposition that "the United States is an indispensable party to any suit brought to establish an interest in Indian trust land." (App.14a.) The Ninth Circuit repeated that determination. (App. 2a.) The error in this finding is that the West Bank Lands are not Indian trust lands – rather, they are public domain lands.[6] Indeed, other than the Secretary's 1969 *ex parte* determination of trust status, there is no foundation for a statement that the lands are held in trust. Again, it is noted that this Court rejected that secretarial determination in 1983. *Arizona v. California, supra,* 460 U.S. at 636.

The Secretary of the Interior's sole statutory authority for (a) taking land into trust for tribes is 25 U.S.C. § 465, and (b) proclaiming reservation lands is 25 U.S.C. § 467. The narrow provisions of these two laws do not extend to lands owned by the United States prior to tribal initiation of the fee-to-trust process, which means the lower courts found trust status which could not have been attained under federal law. Congress simply has not authorized the trust acquisition which the courts found.

To further bolster its conclusion that the United States is a necessary and indispensable party, the district court also noted that the Quiet Title Act expressly excludes Indian trust lands from the government's waiver of immunity. But the district court's reliance

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[6] No Indian tribe qualified its land claims within California pursuant to the California Land Review Commission Act of March 3, 1851, 9 Stat. 631, which required all claimants to land to establish their title to the satisfaction of a Commission created by that law; as a result, any Indian lands within the state "became a part of the public domain of the United States." *Indians of California v. United States*, 98 Ct.Cl. 583, 587 (Ct.Cl. 1942) (*citing Barker v. Harvey*, 181 U.S. 481 (1901); *United States v. Title Insurance & Trust Co.*, 265 U.S. 472 (1924)).

here is misplaced as well. Though the United States may be an indispensable party when "lawsuits involve 'the fixing of a boundary' to trust or restricted indian property," *Carlson v. Tulalip Tribes of Washington*, 510 F.2d 1337 (9th Cir. 1975), this is not such a case. The West Bank Lands are not held in trust for the Tribe; and the suit below seeks only to determine the extent to which tribal officials are operating beyond the scope of the Tribe's sovereignty. Under these facts, the United States is either not a necessary and indispensable party or can be joined under the waivers of sovereign immunity of the Quiet Title Act.

Finally, a general consideration further underscores both the fundamental error of the decisions of the lower courts and their larger import. Tribes do not have a fundamental right to ignore applicable federal laws, especially when their actions result in the loss of property belonging to their neighbors. To put it bluntly, the result in this case is unjust. We cannot ignore – nor should we – the fact that ancestors of the respondents and other similarly situated Indians were dispossessed of most of their lands, having been confronted by a superior military force from an economically more powerful society. However, that history is not a license for them to ignore laws and judicial decisions requiring that they operate within the scope of their tribal sovereignty.

The decisions below are at odds with the modern trend in property law, including this Court's jurisprudence, which uses as its touchstone equitable notions of "justice and fairness" in determining when property rights have been seized. *See, e.g., Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998); *Hodel v. Irving*, 481 U.S. 704 (1987); and *Andrus v. Allard*, 444 U.S. 51, 65 (1979). This case thus presents the question of whether and to what degree this Court's jurisprudence of "justice and fairness" applies equally to the separate but related question of the existence and nature of an individual's right to present legal claims. If the courts will not examine whether the defense of sovereign immunity is even appropriately being interposed when tribal officials and

representatives are alleged to be operating beyond the scope of tribal sovereignty, then no litigant can ever challenge illegal actions of the officials of any Indian tribe. That cannot be, and is not, the law.

The actions of respondents – with the obvious and documented sanction of the Department of the Interior – are depriving petitioners of their property – property to which the Tribe has no legal right. The modern approach brings a flexible and equitable concern for justice and fairness to the issue of whether property rights are being illegally taken. It cannot be reconciled with the notion that tribes can act with impunity.

III. CONCLUSION

For the reasons stated above, petitioners respectfully urge that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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November 24, 2003

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APPENDIX A

United States Court of Appeals for the Ninth Circuit

No. 02-56782
D.C. No. CV-02-04783-JFW

CALVERT TURLEY; DELORES TURLEY; JOSEPH WHANN; NANCY WHANN; GREGORY GATES; DEBORAH GATES; ROBERT THWEATT,

Plaintiffs-Appellants,

v.

DANIEL EDDY, JR., an individual in his official capacity of Chairman of the Tribal Council for the Colorado River Indian Tribes; RUSSELL WELSH, an individual in his official capacity of Vice-Chairman of the Colorado River Indian Tribes; SONIA STONE, an individual in her official capacity as Council Member for the Colorado River Indian Tribes; HERMAN "TJ" LAFFOON, an individual in his official capacity as Council Member for the Colorado River Indian Tribes; SONIA CHAVEZ, an individual in her official capacity as Council Member for the Colorado River Indian Tribes; DOREEN WELSH, an individual in her official capacity as Council Member for the Colorado River Indian Tribes; VALERIE WELSH-TAHBO, an individual in her official capacity as Council Member for the Colorado River Indian Tribes; DENNIS PATCH, an individual in his official capacity as Council Member for the Colorado River Indian Tribes; CRAIG CHUTE, an individual,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California

John F. Walter, District Judge, Presiding

Submitted July 8, 2003**
Pasadena, California

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

MEMORANDUM

The plaintiffs sued individual officers of the Colorado River Indian Tribes ("CRIT") for evicting them from land known as the Western Boundary. Rule19 requires that a case be dismissed if a necessary and indispensable party cannot be joined. CRIT is a necessary party because it claims an interest in the land and its interest would be impaired by the plaintiffs' suit. Fed. R. Civ. P. 19(a). CRIT cannot be joined because it has tribal sovereign immunity. CRIT is indispensable because a judgment rendered in its absence would be prejudicial to CRIT, there is no form of relief to lessen the prejudice, and the plaintiffs could not obtain an adequate remedy in its absence. Fed. R. Civ. P. 19(b). The plaintiffs may have difficulty obtaining relief if the case is dismissed, but when tribal sovereign immunity is at stake, that factor has little weight. See American Greyhound Racing, Inc. v Hull, 305 F.3d 1015, 1025 (9th Cir. 2002).

Because Indian trust lands are at stake, the United States is also a necessary and indispensable party. See Imperial Granite Co. v. Pala Band of Mission Indians, 940 F.2d 1269, 1272 n.4 (9th Cir. 1991); Carlson v. Tulalip Tribes of Washington, 510 F.2d 1337, 1339 (9th Cir. 1975).

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The plaintiffs argue that CRIT's reservation does not include the Western Boundary lands, that CRIT has no legally protected interest in the lands, and that CRIT therefore is not a necessary and indispensable party. Along the same lines, the plaintiffs argue that the Western Boundary lands are not Indian trust lands, and that the United States is not a necessary and indispensable party. In this respect, the plaintiffs are simply asserting what they seek to prove in their suit. A plaintiff cannot avoid the requirements of Rule 19 merely be asserting that a party has no legally protected interest. Such circular arguments are unavailing. See American Greyhound, 305 F.3d at 1024; Shermoen v. United States, 982 F.2d 1312, 1317 (9th Cir. 1992).

Of course, we would not find CRIT to be a necessary and indispensable party if it made only a "patently frivolous" claim of interest in the Western Boundary lands. Shermoen, 982 F.2d at 1318. But, at a minimum, it is clear that there is a legitimate dispute about the boundaries of CRIT's reservation, and that CRIT has a legitimate, non-frivolous claim of interest in the Western Boundary lands. See Arizona v. California, 460 U.S. 605, 629-31 (1983); Arizona v. California, 530 U.S. 392, 418-19 (2000). Consequently, the district court properly dismissed the case.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 02-4783-JFW (RCx) Dated: October 4, 2002

Title: CALVERT TURLEY, et al. v DANIEL EDDY, JR., et al.

PRESENT: HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

K. Leigh Ray	None Present
Courtroom Deputy	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None Present

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

PROCEEDINGS (IN CHAMBERS):

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT (filed 3/26/02.)

Defendant's Motion to Dismiss Plaintiffs' Complaint ("Motion") came on regularly for hearing on September 23, 3002. After hearing oral argument on Defendants' Motion, the Court took the matter under submission.

After considering the moving, opposition and reply papers, and the oral argument of all parties, the Court Orders as follows:

1. Statement of Facts.

Plaintiffs' action challenges the sovereign authority of the Colorado River Indian Tribes ("CRIT" or "Tribe") over a portion of land that lies within the Western Boundary lands along the western side of the Colorado River within the State of California ("West Bank Lands").

Plaintiffs Calvert Turley, Delores Turley, Joseph Whann, Nancy Whann, Gregory Gates, Deborah Gates and Robert Thweatt ("Plaintiffs") were all residents of developments located on West Bank Lands pursuant to use permits issued by the Tribe. Complaint ¶¶ 3-10. In late 2001, the Tribe terminated the use permits under which the developments operated and gave all tenants, including Plaintiffs, notice to vacate the premises. Complaint ¶¶39, 45.

Defendants are Daniel Eddy, Jr., Chairman of the CRIT Tribal Council, Russell Welsh, Vice-Chairman of the CRIT Tribal Council, Sonia Stone[1], Secretary of the Tribal Council, Dennis Patch, Herman Laffoon, Doreen Welsh and Valerie Welsh-Tahbo, all members of the Tribal Council and Craig Chute, a non-member sued in his capacity as a representative of the Tribe. Complaint ¶¶11-18.

Plaintiffs' primary contention is that the West Bank Lands are not part of the CRIT reservation and therefore, Defendants have no authority to evict Plaintiffs from the West

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[1] Plaintiffs named eight Tribe members, but because Plaintiffs named Sonia Stone twice, in her present and former name, there are only seven Tribe member Defendants. *See* Defendants' Memorandum of Points and Authorities ("Motion") 9:19-21.

Bank Lands. By contrast, Defendants' content that the West Bank Lands are, and for over thirty years have been, part of the CRIT reservation, held by the United States in trust for the Tribe, and therefore Defendants have the right to terminate Plaintiffs' use permits and evict Plaintiffs from the West Bank Lands.[2]

The dispositive issue presented by Defendants' Motion is whether Plaintiffs have failed to name the Tribe and the United States as necessary and indispensable parties. If one or both of these parties must, but cannot be joined, then the action must be dismissed.

Plaintiffs content that joinder of the Tribe and United States is not an issue. Plaintiffs assume that the West Bank Lands are not Tribal land, and base their claims for relief on this assumption. From this fundamentally flawed premise, Plaintiffs then argue that the Tribe is not a necessary party because Tribal land is not at issue.[3] Despite Plaintiffs' contention, the core dispute raised by Plaintiffs' Complaint concerns the boundaries of the CRIT reservation.

2. Legal Standard.

Federal Rule of Civil Procedure 19 sets forth the framework for determining whether a party is a necessary and

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[2] At oral argument Plaintiffs' counsel conceded that Plaintiffs are holdover tenants and have no right to possess or occupy the West Bank Land developments. As holdover tenants, Plaintiffs' acknowledge that they can be lawfully evicted from the West Bank Lands, but they argue that only the owners of the land – the United States, and not the Tribe, can evict them.

[3] Plaintiffs also claim that the United States is not a necessary party to this action because determination of this action will not impact the United States' ownership of the West Bank Lands. For the reasons discussed herein, Plaintiffs are wrong.

indispensable party such that the action may not proceed in the party's absence. The analysis under Rule 19 is a two step process. The Court must first determine whether the non-party is "necessary" to the lawsuit. Shermoen v. United States, 982 F.2d 1312, 1317 (9th Cir. 1992), cert. denied, 509 U.S. 903 (1993). If the non-party is a "necessary" party, but the non-party cannot be joined, then the Court must determine whether the non-party is an "indispensable" party such that the suit should be dismissed." Id.

A. Necessary Party Test.

Federal Rule of Civil Procedure 19(a) sets forth two tests, either of which may be used to determine whether a non-party is a "necessary party":

(1) if in the non-party's absence complete relief cannot be accorded among the present parties. Fed. R. Civ. P. 19(a)(1). See American Greyhound Racing, Inc. v. Hull, 2002 WL 31085603 at *4-5 (9th Cir. 2002); Dawavendewa v. Salt River Project Agricultural Improvement and Power District, 276 F.3d 1150, 1155 (9th Cir. 2001); Shermoen, 982 F.2d at 1317; or

(2) if the non-party claims a legally protected interest in the action such that the disposition of the action in the non-party's absence may (i) as a practical matter, impair or impede the non-party's ability to protect that interest or (ii) expose the current parties to a risk of incurring multiple or inconsistent obligations by reason of the claimed interest. Fed. R. Civ. P. 19(a)(2)(i) and (ii). See American Greyhound, 2002 WL 31085603 at *4-5; Dawavendewa, 276 F.3d at 1155; Shermoen, 982 F.2d at 1318.

B. Indispensable Party Test.

Generally, a necessary non-party will be joined as a party. However, if the necessary non-party cannot be joined as

a party, the Court must then determine whether the necessary non-party is also an indispensable party such that the action cannot proceed in the absence of the non-party and must be dismissed. Fed. R. Civ. P. 19(b). See American Greyhound, 2002 WL 31085603 at *7; Dawavendewa, 276 F.3d at 1161; Shermoen, 982 F.2d at 1318.

Rule 19(b) sets forth four factors the Court must consider to determine whether an action should be dismissed because a non-party is an indispensable party. See American Greyhound, 2002 WL 3108503 at *7; Dawavendewa, 276 F.3d at 1161; Shermoen, 982 F.2d at 1318. The four factors are as follows: (1) the prejudice to any party or the non-party; (2) whether relief can be constructed, by protective provisions in the judgment or other measures, to lessen or avoid prejudice; (3) whether an adequate, even if incomplete, remedy can be awarded without the non-party; (4) whether an alternative forum exists if the action is dismissed for nonjoinder. American Greyhound, 2002 WL 31085603 at *7; Dawavendewa, 276 F.3d at 1161-1162; Shermoen, 982 F.2d at 1318-1319. In matters concerning Native American Tribes, the fourth factor is, for the most part, disregarded. See American Greyhound, 2002 31085603 at *7 ("With regard to the fourth factor, however, we have regularly held that the tribal interest in immunity overcomes the lack of an alternative remedy or forum for the plaintiffs.")

3. Analysis.

a. The Tribe Is a Necessary Party.

i. In the Absence of the Tribe Plaintiffs Cannot Obtain Complete Relief.

Based on the relief sought in Plaintiffs' Complaint, the Court could not accord Plaintiffs complete relief in the absence of the Tribe. Plaintiffs' seek a declaration from the Court that:

1. "[T]he actions of the defendants in asserting tribal jurisdiction over the plaintiffs and the West Bank Lands are contrary to federal law and beyond CRIT's sovereignty," Complaint Prayer ¶A;

2. "[T]he Four Reservations Act [limiting the number of reservations in the State of California] precludes any expansion of the [CRIT] Reservation into the State of California," Complaint Prayer ¶ B; and

3. "[T]he 1865 Act [establishing the CRIT Reservation] precludes any expansion of the [CRIT] Reservation into the State of California," Complaint Prayer ¶ C.

In addition, Plaintiffs' seek an injunction from the Court prohibiting Defendants "from asserting that the CRIT reservation extends into the State of California and from undertaking any exercise of tribal reservation jurisdiction within California." Complaint Prayer ¶ D.

Although artfully pled, Plaintiffs' Complaint requires the Court to determine the boundaries of the CRIT reservation, or more specifically, to determine that the CRIT reservation does not include the West Bank Lands. Yet, only the eight named Defendants would be bound by a judgment of the Court. The Tribe could still assert its jurisdiction over the West Bank Lands and could still evict Plaintiffs from the West Bank Lands. Without naming the Tribe as a party, even if Plaintiffs obtained the relief they seek, they would not obtain complete relief since a judgment against these Defendants would not bind the Tribe. See Pit River Home & Agricultural Co-op. Association v. United States, 30 F.3d 1088, 1099 (9th Cir. 1994); Confederated Tribes of the Chehalis Indian Reservation v. Lujan, 928 F.2d 1496, 1498 (9th Cir. 1991).

ii. Impairment of the Tribes Legally Protected Interest Is Certain.

The Tribe has a legally protected interest in whether the West Bank Lands are reservation lands. See Pit River Home, 30 F.3d at 1099 ("the [Tribe] clearly has a legal interest in the litigation which would be impaired by the disposition of this action [to determine the beneficial owners of a piece of real property] without its presence"); Shermoen, 982 F.2d at 1317 ("absent tribes have an interest in preserving their own sovereign immunity, with its concomitant right not to have [their] legal duties judicially determined without consent.") (Internal quotations omitted).[4]

For more than 30 years the Tribe has operated under the assumption that the West Bank Lands are part of the CRIT reservation; an assumption, likewise relied upon by Plaintiffs and their predecessors in interest when they obtained use permits for parcels of land within the West Bank Lands. Without question the Tribe would have a legal interest in any judicial determination regarding the boundaries of the CRIT reservation.

Accordingly, based on either Rule 19(a)(1) or 19(a)(2)(i), the Court finds that the Tribe is a necessary party to this action.[5] As a result, the Court must now determine whether the Tribe can be joined as a party.

b. The Tribe Cannot Be Joined as a Party

"Federally recognized Indian tribes enjoy sovereign immunity from suit and may not be sued absent an express and

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[4] Moreover, in Shermoen, the Ninth Circuit found that satisfaction of this factor required no more than the non-party have a "claimed" interest. Shermoen, 982 F.2d at 1317.

[5] Because the Tribe is a necessary party under either Rule 19(a)(1) or 19(a)(2)(i), the Court need not consider the test under Rule 19(a)(2)(ii); whether the Tribe's absence could subject the parties to a substantial risk of multiple or inconsistent obligations.

unequivocal waiver of immunity by the tribe or abrogation of tribal immunity by Congress." Dawavendewa, 276 F.3d at 1159. See also Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509 (1991) ("Indian tribes are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories. Suits against tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation.")

The Tribe has not waived its immunity and there has been no Congressional abrogation of Tribal immunity as to disputes over the boundaries of reservation land. See e.g., 28 U.S.C. § 2409a(a). Therefore, the Tribe cannot be joined as a party to this action. See American Greyhound Racing, Inc., 2002 WL 31085603 at *9; Dawavendewa, 276 F.3d at 1159; Shermoen, 982 F.2d at 1318.

c. The Tribe Is an Indispensable Party.

i. The Tribe Will Be Prejudiced If Not Joined As A Party.

The first factor to consider in determining whether the Tribe is an indispensable party, is whether the Tribe will be prejudiced if not joined as a party in this action. Fed. R. Civ. P. 19(b). This analysis duplicates, in large part, the foregoing analysis as to whether the Tribe is a necessary party under Rule 19(a). See American Greyhound, 2002 WL 31085603 at *7; Dawavendewa, 276 F.3d at 1162.[6]

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[6] The Ninth Circuit, along with several other Circuits, has noted that if the necessary party enjoys sovereign immunity from suit, there may be little need to consider the Rule 19(b) factors "because immunity itself may be viewed as 'one of those interests compelling by themselves,' which requires dismissing the suit." Dawavendewa, 276 F.3d at 1162 (internal citations omitted). However, the Ninth Circuit continues to engage in the

If the Court granted Plaintiffs the requested relief, namely a declaration that the West Bank Lands are not within the CRIT reservation, the Tribe's interest in maintaining and protecting reservation land would be seriously prejudiced. See Wildman v. United States, 827 F.2d 1306, 1309 (9th Cir. 1987) (the land "held in trust by the United States for the Indians [is] the tribes' 'single most important economic resource'. ... The land is the essential base of tribal culture, development and society.")

ii. There Is No Means By Which To Avoid Prejudice to the Tribe.

The second factor to consider in determining indispensability is whether relief can be constructed to lessen or avoid prejudice. Fed. R. Civ. P. 19(b). The Court cannot provide Plaintiffs the relief they seek without enormous prejudice to the Tribe. Plaintiffs seek a judgment from this Court determining the boundaries of the CRIT reservation, or more specifically, determining that the boundary of the CRIT reservation does not extend into the State of California. Under the circumstances, it is impossible for the Court to fashion a remedy that would not be prejudicial to the non-party Tribe. See Dawavendewa, 276 F.3d at 1162.

iii. There Is No Means By Which To Avoid Prejudice to the Tribe.

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four factor analysis. American Greyhound, 2002 WL 31085603 ay *7.

reservation does not extend into the State of California. Under the circumstances, it is impossible for the Court to fashion a remedy that would not be prejudicial to the non-party Tribe. See Dawavendewa, 276 F.3d at 1162.

iii. In the Absence of The Tribe, No Adequate Remedy Can be Awarded.

The third factor to consider is whether a judgment rendered in this action, without the Tribe as a named party, will provide Plaintiffs with an adequate remedy. Fed. R. Civ. P. 19(b). As explained above, any judgment entered for Plaintiffs declaring that the West Bank Lands are not within the Tribe's sovereignty and enjoining the exercise of Tribal jurisdiction within California, would not be enforceable against the Tribe. As a result, for all practical purposes, such a judgment would not provide Plaintiffs with the relief requested because the Tribe itself would not be prohibited from exercising jurisdiction over the West Bank Lands and evicting Plaintiffs. See Dawavendewa, 276 F.3d at 1162.

iv. The Absence of an Alternative Forum Cannot Overcome Tribal Sovereign Immunity.

As noted above, when Tribal sovereign immunity is at issue, the fourth factor under Rule 19(b), the absence of an alternative forum, is rendered all but moot. See American Greyhound, 2002 WL 31085603 at *7. Although Plaintiffs will not have an alternative judicial forum from which to seek relief, there may be both an administrative and a political process by which Plaintiffs can obtain the relief they seek.[7]

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[7] For example, one of the Plaintiffs in this action has already appealed the Tribe's termination of his use permit to the Department of Interior Board of Indian Appeals, which overturned the decision of the Regional Director of the Bureau of Indian Affairs. Defendants' Motion p. 7

In applying the four factors, the Court concludes that the Tribe is an indispensable party that cannot be joined in this action. Therefore, pursuant to Rule 19(b) Plaintiffs' case must be dismissed.

4. The United States Is Also a Necessary and Indispensable Party.

The same analysis requires the Court to hold that the United States, which holds the West Bank Lands in trust for the Tribe, is also a necessary and indispensable party. In addition, it has long been held that "[t]he United States is an indispensable party to any suit brought to establish an interest in Indian trust land." Imperial Granite Company v. Pala Band of Mission Indians, 940 F.2d 1269, 1272 (9th Cir. 1991). Moreover, although the United States has consented to be sued in actions to quiet title in most public lands, it has expressly excluded Indian trust lands from that waiver of immunity. 28 U.S.C. §2409a(a).

5. Amendment Would Not Save Plaintiffs Complaint.

Ordinarily the Court would provide Plaintiffs an opportunity to amend their Complaint. See Chang v. Chen, 80 F.3d 1293, 1296 (9th Cir. 1966). However, Plaintiffs will not be able to cure this defect, because the relief they seek requires the Court to determine the boundaries of the CRIT reservation without naming the United States or the Tribe, the legal and beneficial owners of the land. Where amendment would be futile, the Court may deny leave to amend. See DeSoto v. Yellow Freight Systems, Inc., 957 F.2d 655, 658 (9th Cir. 1992).[8]

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[8] Plaintiffs' counsel agreed at oral argument that leave to amend would be futile.

6. Conclusion.

Based on the foregoing the Court finds that the Tribe and the United States are necessary and indispensable parties that cannot be joined in this action. In addition, the Court finds that providing Plaintiffs with leave to amend would be futile because there is no possibility that Plaintiffs could state a claim for relief. See Shermoen, 982 F.2d at 1319 (in denying the Plaintiffs' Motion to Amend, the lower court found that, "there is no possibility [that Plaintiffs could] stat[e] a cause of action [which required the Court to] tak[e] away something over which the tribes have sovereign immunity.") Therefore, the Court GRANTS with prejudice Defendants' Motion to Dismiss Plaintiffs' Complaint.

IT IS SO ORDERED.

APPENDIX C

United States Court of Appeals for the Ninth Circuit

No. 02-56782
D.C. No. CV-02-04783-JFW

CALVERT TURLEY, DELORES TURLEY, JOSEPH WHANN, NANCY WHANN, GREGORY GATES, DEBORAH GATES, and ROBERT THWEATT,

Plaintiffs-Appellants,
v.

DANIEL EDDY, JR., an individual in his official capacity of Chairman of the Tribal Council for the Colorado River Indian Tribes; RUSSELL WELSH, an individual in his official capacity of Vice-Chairman of the Colorado River Indian Tribes; SONIA STONE, an individual in her official capacity as Council Member for the Colorado River Indian Tribes; HERMAN "TJ" LAFFOON, an individual in his official capacity as Council Member for the Colorado River Indian Tribes; SONIA CHAVEZ, an individual in her official capacity as Council Member for the Colorado River Indian Tribes; DOREEN WELSH, an individual in her official capacity as Council Member for the Colorado River Indian Tribes; VALERIE WELSH-TAHBO, an individual in her official capacity as Council Member for the Colorado River Indian Tribes;
DENNIS PATCH, an individual in his official capacity as Council Member for the Colorado River Indian Tribes; and CRAIG CHUTE, an individual,

Defendants-Appellees.

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

ORDER

The panel has voted to deny the petition for rehearing and to deny the petition for rehearing en banc, filed July 30, 2003.

The full court has been advised of the petition for en banc rehearing, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing and the petition for rehearing en banc are DENIED.

APPENDIX D

Quiet Title Act, 28 U.S.C. § 2409a

§ 2409a. Real Property Quiet Title Actions.

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

APPENDIX E

California Indian Reservation Act of April 8, 1864,
13 Stat. 39

CHAP. XLVIII. – *An Act to provide for the better Organization of Indian Affairs in California.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of April, anno Domini eighteen hundred and sixty-four, the state of California shall, for Indian purposes, constitute one superintendency, for which there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a superintendent of Indian affairs for said superintendency, at a salary of three thousand six hundred dollars per annum, who shall reside at a point within said state, to be selected by the Secretary of the Interior, and who, upon executing a bond, upon such terms and such sum as may be prescribed by the Secretary of the Interior, and taking the usual oath of office, shall have under his control and management, in like manner and subject to like rules and regulations as are prescribed for superintendents of other superintendencies, the Indians and Indian reservations that are or may hereafter be established in said state: *Provided,* That the superintendent shall be authorized to appoint a clerk, at a compensation not to exceed eighteen hundred dollars per annum.

SEC. 2. *And be it further enacted,* That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said state, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the

purposes for which they are intended: *Provided,* That at lease one of said tracts shall be located in what has heretofore been known as the northern district: *And provided, further,* That if it shall be found impracticable to establish the reservations herein contemplated without embracing improvements made within their limits by white persons lawfully there, the Secretary of the Interior is hereby authorized and empowered to contract for the purpose of such improvements, at a price not exceeding a fair valuation thereof, to be made under his direction. But no such contract shall be valid, nor any money paid thereon, until, upon a report of said contract and of said valuation to Congress, the same shall be approved and the money appropriated by law for that purpose: *And provided, further,* That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is so included, the same may be enlarged to such an extent as in the opinion of the President may be necessary, in order to its complete adaptation to the purposes for which it is intended.

SEC. 3. *And be it further enacted,* That the several Indian reservations in California which shall not be retained for the purposes of Indian reservations under the provisions of the preceding section of this act, shall, by the commissioner of the general land-office, under the direction of the Secretary of the Interior, be surveyed into lots or parcels of suitable size, and as far as practicable in conformity to the surveys of the public lands, which said lots shall, under his direction, be appraised by disinterested persons at their cash value, and shall thereupon, after due advertisement, as now provided by law in case of other public lands, be offered for sale at public outcry, and thence afterward shall be held subject to sale at private entry, according to such regulations as the Secretary of the Interior may prescribe: *Provided,* That no lot shall be disposed of at less than the appraised value, nor at less than one dollar and twenty-five cents

per acre: *And provided, further,* That said sale shall be conducted by the register and received of the land-office in the district in which such reservation or reservations may be situated, in accordance with the instructions of the department regulating the sale of public lands.

SEC. 4. *And be it further enacted,* That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint an Indian agent for each of the reservations which shall be established under the provisions of this act, which said agent shall reside upon the reservation for which he shall be appointed, and shall discharge all the duties now or hereafter to be required of Indian agents by law, or by rules and regulations adopted, or to be adopted, for the regulation of the Indian service, so far as the same may be applicable. Each of the agents appointed as aforesaid shall, before entering upon the duties of his office, give bond in such penalties and with such conditions and such security as the President or Secretary of the Interior may require, and shall hold his office for the term of four years, unless sooner removed by the President, and shall receive an annual salary at the rate of eighteen hundred dollars.

SEC. 5. *And be it further enacted,* That there may be appointed, in the manner prescribed by law, for each of said reservations, if in the opinion of the Secretary of the Interior the welfare of said Indians shall require it, one physician, one blacksmith, one assistant blacksmith, one farmer, and one carpenter, who shall each receive compensation at rates to be determined by the Secretary of the Interior, not exceeding fifty dollars per month.

SEC. 6. *And be it further enacted,* That hereafter, when it shall become necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the general land-office, and as nearly as may be in conformity to the rules and regulations under which other

public lands are surveyed.

SEC. 7. *And be it further enacted,* That all Indian agents shall reside at their respective agencies, and shall in no case be permitted to visit the city of Washington except when ordered to do so by the commissioner of Indian affairs. And it is hereby made the duty of said commissioner to report all cases of the violation of this section to the President, with the request that the agents disregarding the provisions herein contained be at once removed from office.

SEC. 8. *And be it further enacted,* That all acts or parts of acts in conflict with the provisions of this act, be, and the same are hereby, repealed; and all offices and employments connected with Indian affairs in California not provided for in this act be, and the same are hereby, abolished.

APPROVED, April 8, 1864.

APPENDIX F

Colorado River Reservation Act of March 3, 1865,
13 Stat. 541, 559

CHAP. CXXVII. – *An Act making Appropriations for the current and contingent expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes for the Year ending thirtieh June, eighteen hundred and sixty-six, and for other Purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian department and fulfilling treaty stipulations with the various Indian tribes: –

* * *

Indian Service in the Territory of Arizona. – For the general incidental expenses of the Indian service in the Territory of Arizona, presents of goods, agricultural implements, and other useful articles, and to assist them to locate in permanent abodes, and sustain themselves by the pursuits of civilized life, to be expended under the direction of the Secretary of the Interior, twenty thousand dollars.

All that part of the public domain in the Territory of Arizona, lying west of a direct line from Half-Way Bend to Corner Rock on the Colorado River, containing about seventy-five thousand acres of land, shall be set apart for an Indian reservation for the Indians of said river and its tributaries.

To supply deficiencies in the Indian service in Arizona Territory, twelve thousand nine hundred dollars for the present fiscal year.

APPENDIX G

Act of April 30, 1964, 78 Stat. 188

Public Law 88-302

AN ACT

To fix the beneficial ownership of the Colorado River Indian Reservation located in the States of Arizona and California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of fixing the beneficial ownership of real property interests in the Colorado River Reservation now occupied by the Colorado River Indian Tribes, its members, and certain Indian colonists, all right, title, and interest of the United States in the unallotted lands of the Colorado River Reservation, including water rights and mineral rights therein, together with all improvements located thereon and appurtenant thereto, except improvements placed on the land by assignees or by Indian colonists, and except improvements furnished by the United States for administrative purposes (including irrigation facilities) or for the housing of Federal employees, are hereby declared to be tribal property held in trust by the United States for the use and benefit of the Colorado River Indian Tribes of the Colorado River Reservation.

SEC. 2. For the purpose of this Act:

(a) "Tribes" means the Colorado River Indian Tribes of the Colorado River Reservation, with a constitution adopted pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as said constitution now exists or may hereafter be amended, consisting of a band of the Mohave Indians,

the band of Chemehuevi Indians affiliated therewith, and various Indians heretofore or hereafter adopted by the Colorado River Indian Tribes.

(b) "Colorado River Reservation" means the reservation for Indian use established by the Act of March 3, 1865 (13 Stat. 559), as modified and further defined by the Executive orders of November 22, 1873, November 16, 1874, May 15, 1876, and November 22, 1915, all of which area shall be deemed to constitute said reservation.

SEC. 3. Any person of Indian blood, his spouse of Indian blood (excluding persons whose Indian blood is traceable solely to Indian tribes, bands, or groups not resident in or subject to the jurisdiction of the United States), and any dependent child of either or both of them, who is not a member of the tribes on the date of this Act, and who has settled on irrigated lands of the Colorado River Reservation through application for a settler's land permit and who is still holding such lands by virtue of the authority of a temporary land use permit issued by or under the authority of the tribes or the Federal Government, shall be deemed to be adopted by the tribes if within two years from the date of this Act he files with the tribal council a statement accepting membership in the tribes and renouncing membership in any other tribe, band, or group. Such statement may be filed on behalf of a dependent child by either parent or by a person standing in loco parentis.

SEC. 4. This Act shall become effective upon the agreement of the tribes to abandon the claims now pending in docket numbered 185 and in docket numbered 283A before the Indian Claims Commission under the Act of August 13, 1946 (60 Stat. 1049), and the dismissal of said claims by the Indian Claims Commission. Nothing in this Act shall affect or be taken into consideration in the adjudication of, or with respect to, any other claims now pending by the tribes against the United States.

SEC. 5. The Act of June 11, 1960 (74 Stat. 199), as amended by the Act of September 5, 1962 (76 Stat. 429), is amended to read as follows:

"The Secretary of the Interior is authorized to approve leases of lands on the Colorado River Reservation, Arizona and California, for such uses and terms as are authorized by the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a et seq.), and the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415 et seq.), including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo and Southern Ute Reservations: *Provided, however,* That the authorization herein granted to the Secretary of the Interior shall not extend to any lands lying west of the present course of the Colorado River and south of section 25 of township 2 south, range 23 east, San Bernardino base and meridian in California, and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation: *Provided further,* That any of the described lands in California shall be subject to the provisions of this Act when and if determined to be within the reservation."

Approved April 30, 1964.

(2)

No. 03-764

Supreme Court, U.S.
FILED
JAN 8 - 2009
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

CALVERT TURLEY, *et al.*,

Petitioners,

v.

DANIEL EDDY, JR., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals properly determined that an action against certain officials of the Colorado River Indian Tribes ("the Tribe") challenging tribal jurisdiction over those portions of the Colorado River Indian Reservation ("the Reservation") located within the State of California cannot proceed in the absence of the Tribe and must be dismissed because the Tribe retains sovereign immunity from a suit seeking to deprive the Tribe of jurisdiction over land that the United States determined is part of the Reservation and held in trust for the benefit of the Tribe.

2. Whether the court of appeals properly determined that an action seeking to overturn a 1969 determination by the United States that certain lands are part of the Reservation and held in trust for the benefit of the Tribe cannot proceed in the absence of the United States and must be dismissed because the United States has specifically retained sovereign immunity from actions affecting its interest in trust or restricted Indian property.

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Respondents Daniel Eddy, Jr., *et al.*, (collectively, "Respondents"), respectfully request that this Court deny the Petition for a Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit in this case.

STATEMENT OF THE CASE

The petition does not reflect the facts of the case or the legal questions that it presents. At issue in this litigation is an area known as the Western Boundary lands (referred to by Petitioners as the West Bank), which the United States determined are part of the Colorado River Indian Reservation ("the Reservation"), held in trust by the United States for the benefit of the Colorado River Indian Tribes ("the Tribe" or "CRIT"). Since 1969, the United States and the Tribe have treated the Western Boundary lands as tribal land and Petitioners, who are former tenants in the Western Boundary, all signed permits explicitly recognizing that the land they occupied is Reservation land subject to the jurisdiction of the Tribe. Notwithstanding this acknowledgment, Petitioners filed suit against some members of the Tribal Council seeking a judicial determination that, pursuant to the so-called Four Reservations Act of April 8, 1864 and other authorities, the Reservation does not and cannot include the Western Boundary, or any other land located in California.

Since Petitioners' action would affect the interests of both the United States and the Tribe in the Reservation, the district court found that the Tribe and the United States were necessary and indispensable parties to the litigation pursuant to Rule 19 of the Federal Rules of Civil Procedure. Finding that both parties retain sovereign immunity from suits that seek to define the boundaries of an Indian reservation and

therefore, could not be joined, the district court dismissed Petitioners' case. The court of appeals upheld this determination in an unpublished memorandum decision and rejected the request for rehearing and rehearing en banc. Not a single judge on the Ninth Circuit voted to hear Petitioners' request for rehearing.

Although it purports to raise a series of questions regarding the scope of tribal sovereign immunity, the petition is little more than an attempt by holdover tenants to circumvent the Tribe's authority to evict Petitioners for failure to pay rent and otherwise comply with the terms of their permits. Ironically, as the district court recognized, even if Petitioners were to prevail, their action would do nothing to remedy their alleged harm, but would simply transfer jurisdiction over the Western Boundary to the United States Bureau of Land Management ("BLM"). While Petitioners might prefer to subject themselves to the jurisdiction of the BLM, they cannot do so by an action that would redefine the boundaries of an Indian reservation to exclude lands that the United States, the Tribe and they themselves have all acknowledged are part of that very same reservation. The district court's and circuit court's decisions expressly recognize this legal reality and these decisions should not be disturbed.

BACKGROUND

A. The Colorado River Indian Reservation.

The Reservation "was originally created by an Act of Congress in 1865, but its area was later increased by Executive Order." *Arizona v. California*, 373 U.S. 546, 596 (1963) ("*Arizona I*") (internal footnotes omitted). In 1969,

the United States Department of the Interior determined that the correct boundary of the Reservation as established by Congress and the executive orders includes the land known as the Western Boundary. Petition ("Pet.") at 8; *see* Petition Appendix ("Pet. App.") at 10a, 14a; *see also* Supplemental Excerpts of Record of Defendants and Appellees ("SER") at 19-20 (1969 survey order).[1] The Western Boundary lands are therefore part of the Reservation, held in trust by the United States for the benefit of the Tribe. *See* Pet. App. at 14a; SER at 20. Since 1969, and without interruption, both the United States and the Tribe have acted in accordance with the United States' 1969 boundary determination. Pet. App. at 10a; *see id.* at 14a.[2]

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1. The district court relied in part on the 1969 survey order and Petitioners' tribal permits; these documents are contained in the Supplemental Excerpts of Record lodged with the court of appeals.

2. Although the Western Boundary is among the most recent California land to be recognized as part of the Reservation, it is not the first. *See, e.g., Arizona I*, 373 U.S. at 595-96 (describing the Reservation, "located partly in Arizona and partly in California"); *Arizona v. California*, 439 U.S. 419, 428 (1979) (*Arizona I* supplemental decree establishing water rights for Reservation lands in California as of the dates of 1873, 1874 and 1876 executive orders); *Colorado River Indian Tribes v. Town of Parker*, 705 F. Supp. 473, 473 (D. Ariz. 1989) (quoting 1908 act of Congress appropriating funds for "the Colorado River Indian Reservation in California and Arizona"). Even the title of the Act of April 30, 1964, which Petitioners cite for the proposition that the Reservation *cannot* extend into California, describes the Reservation "located in the States of Arizona and California." Pet. App. at 25a.

B. The Petitioners and the Instant Dispute.

Petitioners were residents of developments located on the Reservation pursuant to use permits issued by the Tribe. Pet. App. at 5a. By signing the permits, Petitioners specifically acknowledged the legal status of the lands at issue in this case:

> Applicant hereby acknowledges that the title and right to possession of said lands is and has at all times during applicant's past occupancy and/or use thereof been vested in the United States of America, hereinafter referred to as United States, now held in trust for the [Colorado River Indian Tribes].

SER at 64, 67, 70, 77 (permits); *see* Pet. App. at 10a.

When the Tribe terminated Petitioners' permits and gave Petitioners notice to vacate the premises, Petitioners filed the instant action challenging the Tribe's authority to govern the Western Boundary and other lands in California. *See* Pet. App. at 5a. Specifically, Petitioners filed suit against seven then-members of the Tribal Council and one employee of an economic enterprise owned by the Tribe. *See* Pet. App. at 5a. As the district court noted, Petitioners seek a declaration that (1) the "'Four Reservations Act . . . precludes any expansion of the [CRIT] Reservation into the State of California;'" (2) the "'1865 Act [establishing the CRIT Reservation] precludes any expansion of the [CRIT] Reservation into the State of California;'" and (3) the "'actions of the defendants in asserting tribal jurisdiction over the plaintiffs and the West Bank Lands are contrary to federal law and beyond CRIT's sovereignty;'" and also an injunction

prohibiting defendants "'from asserting that the CRIT reservation extends into the State of California and from undertaking any exercise of tribal reservation jurisdiction within California.'" Pet. App. 9a (district court order, quoting complaint) (parentheses by the court).

C. The Rulings Below.

The district court granted defendants' motion to dismiss. Pet. App. at 4a-15a. In an unpublished order, the court concluded that, because the action seeks to define the boundaries of the Reservation, both the Tribe and the United States are necessary and indispensable parties under Rule 19 and neither the Tribe nor the United States can be joined because they retain sovereign immunity with respect to the suit. *Id.* at 14a-15a. The court found that both the Tribe and the United States have long considered the Western Boundary to be part of the Reservation. Pet. App. at 10a; *see id.* at 14a. Moreover, the district court found that Petitioners relied on the same determination when they obtained permits from the Tribe. *Id.* at 10a. Before the district court, Petitioners "conceded that Plaintiffs are holdover tenants and have no right to possess or occupy" the developments. *Id.* at 6a n.2. The district court noted that "[a]s holdover tenants, Plaintiffs' acknowledge that they can be lawfully evicted," but they argue that only the United States, and not the Tribe, can evict them. *Id.* Under these circumstances, the court concluded that the Tribe and the United States claim an interest in whether the land is part of the Reservation and are therefore necessary and indispensable parties to a suit seeking to define the Reservation boundary otherwise. *Id.* at 10a, 14a.

The court of appeals, after determining that the case was suitable for decision without oral argument, determined that the district court did not abuse its discretion and affirmed. *Id.* at 1a-3a.

REASONS FOR DENYING THE PETITION

The petition fails to identify any basis upon which this Court should grant review. The lower courts' rulings do not conflict with any decision of this Court or any circuit court, and do not present any unsettled issues of law. Indeed, Petitioners have cited no federal case—and Respondents are aware of none—that has ever allowed a suit similar to the present one to proceed against either a tribe or tribal officials, where the requested relief would have the effect of determining the boundaries of a reservation or a tribe's right to govern a particular area.

Lacking any rationale for this Court's review, Petitioners misrepresent the facts of the dispute, the rulings below, and the decisions of this and other courts. Most significantly, Petitioners claim repeatedly that this Court must hear the case in order to determine whether a tribe may "unilaterally expand" a reservation without fear of judicial review. Pet. at 5; *see id.* at 4, 13-14. While that may be an interesting question, it is not a question presented by this case. Here, the United States, not the Tribe or its officials, determined that the Reservation includes the Western Boundary.

Thus, contrary to Petitioners' claim that the courts below "dismissed the case on sovereign immunity grounds without inquiry as to the scope of tribal sovereignty," (Pet. at 3), the district court dismissed the case (and the circuit court affirmed) because both the United States and the Tribe claim

an interest in the Western Boundary, based on the United States' determination that the Western Boundary is part of the Reservation. Pet. App. at 14a; *see id.* at 2a. Under well-established precedent, both the Tribe and the United States are necessary and indispensable parties to a judicial proceeding that seeks, in effect, to overturn that determination.

I. Petitioners Do Not Present Any Issue Warranting This Court's Review of the Determination That the Tribe Is a Necessary and Indispensable Party.

As the district court recognized, Petitioners' action would terminate tribal governance over the Western Boundary and therefore would directly impair the Tribe's sovereign interests. *See* Pet. App. at 10a, 12a-14a. The district court determined that the Tribe is a necessary party under both Rule 19(a)(1), because in the Tribe's absence "complete relief cannot be accorded" and Rule 19(a)(2)(i), because the Tribe claims a legally protected interest in the action such that disposition in the Tribe's absence may, "as a practical matter impair or impede" the Tribe's ability to protect that interest. Pet. App. at 7a-10a; *see* Fed. R. Civ. P. 19(a).

The district court's analysis is consistent with all of the relevant legal precedent, including those cases cited by Petitioners. *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1153 (9th Cir. 2002), *cert. denied*, 537 U.S. 820 (2002) (dismissing case seeking to challenge a hiring preference instituted by a private firm pursuant to tribal rules because tribe is necessary and indispensable party); *Tamiami Partners, Ltd. v. Miccosukee Tribe*, 177 F.3d 1212, 1225-26 (11th Cir. 1999) (dismissing claims against tribal officials because relief against the

officials would require action by the sovereign); *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271-72 (9th Cir. 1991) (dismissing suit seeking relief from allegedly unlawful closure of an access road for which plaintiff claimed an easement); *Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1387 (9th Cir. 1988) (declining to reach issue of sovereign immunity); *Snow v. Quinault Indian Nation*, 709 F.2d 1319, 1321-22 (9th Cir. 1983) (citing *Swift Transp., Inc. v. John*, 546 F. Supp. 1185, 1188 (D. Ariz. 1982)) (dismissing claims by non-Indian business owners against a tribe); *see also Davis v. United States*, 343 F.3d 1282, 1294 (10th Cir. 2003); *American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002); *Citizen Potawatomi Nation v. Norton*, 248 F.3d 993, 999 (10th Cir. 2001); *Pit River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1103 (9th Cir. 1994); *Shermoen v. United States*, 982 F.2d 1312, 1320 (9th Cir. 1992).

In an effort to avoid the inevitable result compelled by the Rule 19 analysis, Petitioners' assert that the Tribe has no legally protected interest in the matter, because Petitioners believe the Reservation cannot include the Western Boundary lands. Pet. at 11 ("[T]he Tribe cannot be prejudiced if its claim to the West Bank Lands is illegal."). This, of course, is simply what Petitioners seek to prove with their suit. As the circuit court noted, a plaintiff "cannot avoid the requirements of Rule 19 merely by asserting that a party has no legally protected interest." Pet. App. at 3a (citing *American Greyhound*, 305 F.3d at 1024; *see* Fed. R. Civ. P. 19(a)(2) (non-party is necessary if it "claims" an interest that may be impaired); *Davis*, 343 F.3d at 1291 (rejecting argument

similar to Petitioners' as "untenable because it would render the Rule 19 analysis an adjudication on the merits").[3]

Indeed, this Court explicitly rejected a similar attempt to circumvent sovereign immunity with respect to an Indian tribe's challenge to a state's jurisdiction over land. *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 282 (1997) (rejecting suit to prevent state officials from taking actions affecting the tribe's claimed interest in submerged lands within the reservation because "[t]he suit seeks, in effect, a determination that the lands in question are not even within the regulatory jurisdiction of the State. . . . The suit would diminish, even extinguish, the State's control over a vast reach of lands and waters long deemed by the State to be an integral part of its territory."); *see also Dawavendewa*, 276 F.3d at 1160 (rejecting "attempted end run" around tribal sovereign immunity); *Shermoen*, 982 F.2d at 1320; *Imperial Granite*, 940 F.2d at 1270-71.

II. Petitioners Do Not Present Any Issue Warranting This Court's Review of the Determination That the United States Is a Necessary and Indispensable Party.

The lower courts also determined that the United States is a necessary and indispensable party. Pet. App. at 2a, 14a. Petitioners apparently concede that the United States is an

3. Petitioners' claim that this Court's review is necessary to avoid "a theoretical license [for tribes] to unilaterally expand their reservations without accountability" (Pet. at 5) ignores the facts of this case and the relevant legal standard. As the lower courts recognized and as the court of appeals specifically found, the Tribe's "legitimate, non-frivolous claim" is sufficient to demonstrate an interest protected by Rule 19. Pet. App. at 3a; *see Davis*, 343 F.3d at 1291; *Shermoen*, 982 F.2d at 1318; *see also Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987).

indispensable party to any suit involving "the fixing of a boundary" to trust or restricted Indian property, and that the Quiet Title Act explicitly retains the government's sovereign immunity for the purposes of such suits. Pet. at 12-13; *see* 28 U.S.C. § 2409a (Quiet Title Act); *United States v. Mottaz*, 476 U.S. 834, 843 (1986) (stating "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity").

Petitioners nonetheless assert that this is "not such a case," because the land is not part of the Reservation and therefore, is not trust or restricted Indian property. Pet. at 13. Petitioners' circular argument would render the Rule 19 analysis an adjudication on the merits, by requiring the federal courts to determine whether the Western Boundary is trust or restricted Indian property. Pet. App. at 3a, 14a; *American Greyhound*, 305 F.3d at 1024. Since the United States has explicitly retained its sovereign immunity for such purposes, the lower courts did not err in dismissing this case. *See Imperial Granite*, 940 F.2d at 1272 n.4; *Carlson v. Tulalip Tribes*, 510 F.2d 1337, 1338-39 (9th Cir. 1975) (dismissing claim by fee owners within reservation that could affect land claimed by the tribe, because the action might impair the United States' trust responsibilities).[4]

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4. In a transparent effort to attract this Court's attention, Petitioners twice (and wrongly) assert that this Court "rejected" the government's 1969 boundary determination. Pet. at 8, 12. The Court, however, did *not* invalidate the Secretary of the Interior's 1969 survey order, but explicitly stated that, "[o]f course, we now intimate nothing as to the Secretary's power or authority to take the actions that he did or as to the soundness of his determination on the

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III. Petitioners' Other Authorities Have No Bearing on this Case.

Lacking any authorities that are remotely in tension with the rulings below, Petitioners cite a number of irrelevant decisions in a vain attempt to find something to justify review by this Court. First, the petition leads with a discourse on the possible sources of Congress' power to regulate commerce with tribes. *See* Pet. at 7 (citing cases). However, the nature of Congress' power was not at issue below, and Petitioners fail to explain how it might be at issue here.

In addition, Petitioners cite cases involving the California Land Review Commission Act of March 3, 1851 (Pet. at 12 n.6), statutes regarding the government's authority for purchasing land for tribes and adding it to reservations (Pet. at 12), and *Mattz v. Arnett*, 412 U.S. 481, 493-94 (1973), discussing the Act of April 8, 1864 (Pet. at 7).[5] Because the

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merits." *Arizona v. California*, 460 U.S. 605, 636-37 (1983) ("*Arizona II*"). Petitioners also misrepresent the *Arizona I* proceedings, (Pet. at 8), by failing to mention that the Court *rejected* the Special Master's determination of the boundary. *Arizona I*, 373 U.S. at 601 ("We disagree with the Master's decision to determine the disputed boundaries of the Colorado River Indian Reservation."). The water rights dispute relating to the Western Boundary lands eventually settled without adjudicating the issue of the boundary, and the 1969 order was not overturned. *See Arizona v. California*, 530 U.S. 392, 418-19 (2000) (*Arizona III*); *see also id.* at 419 n.6.

5. For instance, Petitioners contend that the Act of April 8, 1864 prohibits the Reservation's existence in California, even though, as discussed above, both Congress and the courts have repeatedly affirmed that the Reservation includes land in California. *See, e.g., Arizona I*, 373 U.S. at 595-96, 598; Pet. App. at 26a (Act of April 30, 1964).

Reservation was established pursuant to other authority, namely the Act of March 3, 1865, "as modified and further defined by" four executive orders signed between 1873 and 1915 (Pet. App. at 26a, the Act of April 30, 1964), Petitioners' authorities regarding other means by which land might become part of an Indian reservation are immaterial.

Finally, Petitioners state that the rulings below are "at odds with the modern trend in property law," citing three takings cases. Pet. at 13. However, Petitioners did not raise (and could not have raised) any such claims below. As the district court noted, Petitioners conceded they are holdover tenants with "no right to possess or occupy" the subject lands, and although they seek to divest the Tribe of beneficial ownership of the lands, they do not claim title themselves. Pet. App. 6a n.2. Thus, even if Petitioners were accorded the relief they seek, they would not own the land or even have a valid permit to remain.

CONCLUSION

Respondents respectfully request that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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